



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12637084

Date: JUNE 16, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a physics teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, regarding substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner taught science at [REDACTED] from 1988 to 2011. The Petitioner then wrote, coached, and performed other activities to promote science teaching. Since 2016, she has taught in [REDACTED] Arizona, first at [REDACTED], a public charter school, and then at the private [REDACTED].⁴ The Petitioner has received honors in [REDACTED] including a Physics Teacher of the Year Award from the [REDACTED] (1997) and the [REDACTED] [REDACTED] for services to science education (2006).

The record shows that the Petitioner received significant, national-level accolades for her educational work in [REDACTED]. That being said, the national interest waiver is not a reward for past accomplishments. Rather, waiver recipients are expected to benefit the United States in their subsequent employment. The initial submission did not include detailed information about the Petitioner's proposed endeavor. On the petition form, the Petitioner indicated that her proposed employment would entail "[t]eaching both intermediate and advanced science courses for middle school and/or high school."

As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance of the Proposed Endeavor

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.⁵

The substantial merit of science education is not in dispute. A key issue in this proceeding is the national importance of the Petitioner's proposed endeavor. Science education, in the abstract, is of national importance, but this does not mean that all science teachers are entitled to a blanket exemption from the job offer requirement.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner received a master's degree in physics from the University of [REDACTED] in 1992.

⁴ USCIS records show that the [REDACTED] filed a nonimmigrant petition to classify the Beneficiary as an O-1A individual with extraordinary ability. USCIS approved that petition and a subsequent extension petition.

⁵ While we may not discuss every document submitted, we have reviewed and considered each one.

Several of the documents submitted initially point to a local emphasis for the Petitioner's work. For example, letters in the record show that, since 2016, the Petitioner "has been a regular attendee to the [redacted] Area Physics Teachers" which "provides networking and professional development for teachers in [redacted]". The head of [redacted] states:

[The Petitioner] teaches middle school Science using textbooks that she has written and published. She also teaches high school Advanced Physics, AP [Advanced Placement] Physics 1, and AP Physics C. Additionally, she has written and implemented a leadership competency curriculum for [redacted] advises the senior homeroom, supports student organizational needs, and teaches extra-curricular science clubs.

The record includes excerpts from textbooks and workbooks that the Petitioner wrote for use in [redacted] but the initial submission does not indicate that her ongoing duties or future plans include such writing. Likewise, letters and documents in the record show that the Petitioner worked with various [redacted] bodies on curriculum and professional development, but the initial submission does not indicate that the Petitioner continued these activities beyond the local level after she arrived in the United States.

After the Director issued a request for evidence (RFE) asking for more details about the proposed endeavor, the Petitioner stated that "her impact goes beyond [the local] community. There is a nationwide teacher shortage crisis, particularly in the area of physics." The Petitioner asserts that "[s]he is working to improve the United States' economic competitiveness through her program for professional development of physics teachers, and she is working to alleviate the dire shortage of physics teachers."

The Petitioner's response to the RFE includes letters signed by Arizona's [redacted] public instruction and by an organizer of a professional development organization called [redacted]. The two letters are mostly identical, including these sample passages:

This letter is being submitted on behalf of [the Petitioner] in support of her petition under the category of "national interest waiver." Most specifically, I'm submitting this letter to address the criteria that [the Petitioner's] endeavor as a physics teacher is in the national importance [*sic*].

....

Beyond the overall demand for teachers, the STEM [science, technology, engineering, and mathematics] areas are a point of emphasis that we should be focused on. [The Petitioner] has already proven that she is an expert in developing national curricula for [redacted] and has brought that magical skill to our country.

The identical language in the submitted letters undermines their probative value. Identical language in letters "suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content." *Hamal v. U.S. Dep't of Homeland Security*, No. 19-2534, slip op. at 8, n.3 (D.D.C. June 8, 2021).

With respect to the stated shortage of physics teachers in Arizona, we agree with the Director that the labor certification process exists to address such shortages. The Petitioner's own work as a science teacher would not appreciably affect the overall shortage. There is some indication that the Petitioner provides supplemental training to other existing science teachers, but the Petitioner has not shown that, or explained how, her work will significantly increase the number of physics teachers.

A co-director of the [redacted] at [redacted] University states that the Petitioner's "work in Arizona is crucial in two ways: 1) helping underqualified teachers improve, through teaching them in Saturday workshops; [and] 2) helping the United States succeed economically in the future, through her classroom teaching." These assertions do not demonstrate any direct impact from the Petitioner's work beyond those whom she teaches (whether they are students or fellow teachers). While science education is important in the aggregate, in *Dhanasar* we determined that the activities of one science teacher does not rise to the level of national importance. *Id.* at 893.

In denying the petition, the Director concluded that "the petitioner's specific endeavor is benefiting the lives of the students at the local level, or in the school district where she teaches . . . but it has not been established that the benefit would be at a national level."

On appeal, the Petitioner acknowledges that we have dismissed several appeals from teachers seeking national interest waivers. (As shown above, teaching plans did not influence the approval of the petition in *Dhanasar*.) The Petitioner contends that her case is different because of "her incredible prior credentials and continued relevance in the field." The Director took these factors into consideration in the second *Dhanasar* prong, relating to whether the Petitioner is well-positioned to advance her proposed endeavor. The Petitioner's credentials and history are not in dispute. The issue, instead, concerns the nature of the proposed endeavor and whether it has both substantial merit and national importance.

The Petitioner states:

[The Petitioner] has demonstrated in [redacted] that she has the potential and would continue to strive to assist the government in the U.S. to help shape the science curriculum. [The Petitioner] also has a national impact in [redacted] by authoring and publishing text books about physics. At this junction, she is unable to do much of this similar work because of her nonimmigrant status, but that is a goal that she hopes to replicate in the United States. . . .

....

[The Petitioner] has looked into working with the American Association of Physics teachers on a panel to discuss the Next Generation Science Standards physics content. However, her current immigration status bars her from higher level work in the United States based on the policies of the Department of Education.

The Petitioner has provided minimal details about her proposed endeavor beyond teaching physics and other science classes at the middle and high school levels. The record shows that the Petitioner wrote textbooks and influenced the physics curriculum at the national level in [redacted]

but her documented contributions have been predominantly at the local level since she arrived in the United States in 2016.

Furthermore, the Petitioner did not articulate specific plans to write textbooks or work on national-level education policy in the United States, either in the initial filing or in response to the RFE. Therefore, such plans were never before the Director for consideration. Instead, the documentation about the Petitioner's work in the U.S. focused on classroom instruction and local-level involvement with professional training, and the Petitioner submitted background documentation about a shortage of physics teachers rather than policy issues or a lack of high-quality textbooks. In response to the RFE, the Petitioner stated that she "will advance the goals of the United States in increasing the number of physics teachers, and improving the teaching of physics" through "professional development of physics teachers." The purpose of the appeal is to establish error in the underlying denial decision. *See* 8 C.F.R. § 103.3(a)(1)(v). Substantial revision of the claim at the appellate level does not establish any such error; the Director did not err by failing to anticipate those revisions.

Even then, the Petitioner's revised plans lack detail and corroboration. The Petitioner does not establish that the American Association of Physics Teachers has sought or otherwise expressed interest in the Petitioner's involvement. The Petitioner does not specify whether the panel mentioned above is a specific, planned event, or a general, hypothetical scenario.

The Petitioner asserts that she "has been collaborating with the head of the physics department at the University [redacted] and the Head of Physics at [redacted] to put together a program to support the Next Generation Science Standards ('NGSS') introduction in middle schools to offer to schools in [redacted] and likely further outside the region." The record indicates that the NGSS have already been developed and are being implemented in various jurisdictions. Therefore, the Petitioner's work would not involve shaping those standards, but rather advocating for their adoption by local jurisdictions.

The Petitioner does not specify how "the policies of the Department of Education" prevent her from contributing even in an advisory capacity. She specified on the petition form that she seeks employment as a physics teacher at a school, rather than as an employee of the U.S. Department of Education. The Petitioner likewise does not explain how her immigration status prevents her from writing textbooks.

The Petitioner asserts that she "has also been working with people on Twitter to bring [redacted] conferences to the West Coast/Arizona. Currently these conferences only are held on the East coast." This assertion lacks detail and supporting evidence, and the Petitioner does not explain the national importance of holding [redacted] conferences in one part of the country instead of another.

The Petitioner has not shown that her proposed work as a school physics teacher, who assists with her colleagues' professional development, has national importance. Subsequent material changes to the proposed endeavor were not before the Director, and lack necessary detail and corroboration.

Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding the remaining issue (regarding whether, on balance, the United States would benefit from waiving the job offer requirement). *See INS v. Bagamasbad*, 429 U.S. 24, 25

(1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.